IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1819 OF 1982

Mr. Shyamsunder S. Bidawatka ....*Plffs.*
vs.
M/s. Indian Silk Mfg. Co.P.Ltd ....*Defnds.*

P.P. Prabhu for the plffs.

None for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 5TH JULY, 2005.

P.C. :

1. The present suit is filed by the plaintiff for the sum of Rs.77,185.25/- as the balance amount due and payable for the goods sold and delivered alongwith interest of Rs.28014.75/-. The total claim in the suit is for Rs.1,06,000/-.

2. According to the plaintiff the plaintiff sold and delivered the fabric to the defendant company pursuant to the orders placed from time to time. Inrespect of the said goods sold and delivered the

defendant did not make payment. After giving credit to the last part payment of Rs.25,000/- in or about April, 1980 there was a balance amount due and payable of Rs.2,77,985.25/-at the foot of the account. The defendant did not make the said payment inspite of the fact that they acknowledged the receipt of the statement of account for the period from 1977-78 and 1978-79 by the letter dated 4.2.1980. In view of the fact the the payment was not made by the defendant the plaintiff issued a legal notice on 4.9.1980 and called upon the defendant to make payment of the aforesaid amount. Thereafter the plaintiff filed Company Petition No. 404 of 1980 in this court and the consent terms were arrived at between the parties in the said Company Petition. The defendant agreed to pay under the said consent terms a sum of Rs.2,00,000/- in monthly instalments of Rs.20,000/- and it was provided that for the rest of the claim the plaintiff is at liberty to file a suit in this court. In view thereof the present suit is filed for the balance claim of Rs.77,985.25/-. After giving credit for

the amount of Rs.2,00,000/- received pursuant to the orders passed in the said Company Petition No.404 of 1980 the defendant has filed written statement and the only ground raised is that some of the goods which were supplied and delivered were of inferior quality. It has also been contended that the accounts are incorrect and they are not liable to make payment for the aforesaid amount of Rs.77,985.25/-. Learned counsel who appeared on the last occasion i.e. on 6.6.2005 informs the court that the defendant has instructed him not to appear any further. The plaintiffs have filed compilation of original documents which is taken on record and marked Exh.P.1. colly. The plaintiff has also filed affidavit of documents. The issues which were framed on 6.6.2005 reads as under :

1. Whether the defendant proves that the goods sold and delivered by the plaintiff are of inferior quality ?

2. Whether the defendant proves that the goods sold by the plaintiff were short supplied as claimed in written statement ?

3. Whether the defendant proves

that the price charged by the plaintiff for goods sold and delivered are higher than the agreed price between the parties as claimed in the written statement ?

4. Reliefs, if any ?

7. In view of the admission of the receipt of the goods by the defendants the only issue which was required to be proved by the defendants was whether the goods sold and delivered are of the inferior quality. The defendants have led no oral evidence and have not proved their case. In view thereof I pass the following decree :

There shall be decree in favour of the plaintiff and against the defendants in terms of prayer clause (a). However the interest from the date of the suit till payment and or realisation will be at the rate of 9% p.a. Suit decreed accordingly. There shall be no order as to costs.

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